BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2020-263-E

Cherokee County Cogeneration Partners, LLC	)	
	)	
Complainant,	)	
	)	
v.	)	**RESPONSE TO MOTION TO STRIKE**
	)	
Duke Energy Progress, LLC and Duke Energy Carolinas, LLC,	)	
	)	
Respondents.	)	

Cherokee County Cogeneration Partners, LLC ("Cherokee"), pursuant to S.C. Code Ann. Regs. 103-829(A), 103-845(C) and 103-846, and South Carolina Rule of Evidence ("SCRE") 103, hereby responds to Duke Energy Carolinas, LLC's and Duke Energy Progress LLC's (together "Duke's") Motion to Strike ("Motion").

I. Background

Duke's Late-Filed Exhibit One put new evidence- the avoided cost components for a 10-year dispatchable tolling agreement calculated as of October 2018- into the record of this case. By contrast, DEC's actual offer to Cherokee in October of 2018 was for a five-year "must-take" contract structure. (Motion, p. 3). In other words, DEC's October, 2018 offer to Cherokee was not for a 10-year dispatchable tolling agreement, and contained no capacity rate. Because DEC had made no such offer to Cherokee in October of 2018, the record at the close of the hearing contained no evidence whatsoever from Duke (or any other party) with respect to the avoided cost components for a 10-year dispatchable tolling agreement.

Accordingly, Duke's Late-Filed Exhibit One, in order to "present[] an apples-to-apples comparison of rates . . . ." (Motion, p. 3) *necessarily had to present new evidence to the*

Commission. Duke's Motion acknowledges this fact. Information that Duke "produced to the South Carolina Office of Regulatory Staff ("ORS") in response to ORS Data Request No. 2-2" (Motion, p. 3) is not in the record of this case, and Duke does not argue that it is. Duke further argues that these avoided cost components are in the record because these components are information "that Witness Freund referenced in his live testimony. (Tr. Vol. 2, p. 70.)" However, the 70th page of Volume 2 of the Transcript (p. 281) is not the testimony of Witness Freund, but instead *Witness Keen*:

agreements on two separate occasions. Those costs, as I think you probably know, Mr. Pringle, that the February 21 offer based on the discovery request we got from ORS actually shows that the dispatchable tolling agreements that we offered in September of 2020 were higher than the calculations of September of '18.

As a result, the record is quite clear that 1) Mr. Freund (the Duke Companies' cost witness) never testified regarding the avoided cost components for a 10-year dispatchable tolling agreement; 2) Mr. Keen only made a passing reference to any such component, and did not publish any of those components; and 3) no other Duke witness offered any testimony whatsoever regarding the avoided cost components for a 10-year dispatchable tolling agreement.

The bottom line is that Late-Filed Exhibit One offered new evidence that was not already in the record of this proceeding.

II. Argument

A. Cherokee Responded Appropriately to the New Evidence Presented by Duke in Late-Filed Exhibit One.

As Duke cites in its Motion, utilities in rate cases (where the utility bears the burden of proof) must be given a "meaningful opportunity" to respond to evidence presented by other parties. *Utils. Serv. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 107, 708 S.E.2d 755, 761 (2011). However, Cherokee is the *complainant* in this case, and the Duke Companies are the *respondents*. As a result, Cherokee must be given a "meaningful opportunity" to respond to Duke's new evidence. Cherokee's Comments appropriately did so. Similarly, denying Cherokee a "meaningful opportunity" to respond to this new evidence would trigger the due process concerns argued by Duke.

Because Late-Filed Exhibit One put into the record *for the first time* an energy component ($34.97/kW-year) calculated by Duke for a 10-year dispatchable tolling agreement, it was entirely appropriate for Cherokee to respond to that component in its answering Comments. And Cherokee did so. Similarly, Cherokee never challenge[d] DEC's calculations of its avoided energy rates in October 2018 . . . ." (Motion, p.2) at any point in the hearing because DEC's offer to Cherokee in October of 2018 was based on something completely different: a "must-take" agreement with a five-year term. Put simply, Cherokee challenged "DEC's calculations of its avoided energy rates in October 2018" at the first and only possible opportunity it had--following DEC's first presentation of these rates (in Late-Filed Exhibit One). Thus, Cherokee is not "challeng[ing] DEC's calculations of its avoided energy rates in October 2018"; rather Cherokee is countering Duke's new evidence to reflect the dispatchability of Cherokee.

Significantly, the avoided cost rates proposed by Cherokee via witness Strunk are exactly what they were- ($63.00/kW-year-including start costs- for capacity and $47.00/kW-year for

energy) as presented at the hearing, and as published in Late-Filed Exhibit One. As such, Duke's contention that Cherokee "proposes a Fall 2018 rate calculation that is even higher than the one initially presented in pre-filed testimony" (Motion, p. 2) and at the hearing is simply wrong. Cherokee does not "propose" a rate different from its filed request in its Comments; as is evident in Cherokee's Proposed Order. Cherokee offers this calculation to 1) respond directly to Duke's newly presented calculation, and 2) reiterate Mr. Strunk's point at the hearing that the avoided cost calculation Mr. Strunk presented in his pre-filed testimony was conservative given that it did not model the benefit of dispatchability. As Mr. Strunk testified, adding dispatch flexibility could increase Cherokee's value to DEC's system.[1] As is clear in its Comments, Cherokee takes issue with Duke's calculations and the inputs and assumptions underlying those calculations, based on the limited information Cherokee possesses about how the energy rate is calculated. Moreover, Cherokee's Comments refute Duke's narrative (at the hearing and continued in Late-Filed Exhibit One), that DEC's subsequent offers (September of 2020 and February of 2021) were "better" than its October 2018 offer.

B. Cherokee's Comments on Late-Filed Exhibit One Were Otherwise Based on Evidence in the Existing Record

The Motion also seeks to strike a portion of Cherokee's Comments on the grounds that Cherokee introduced new evidence not in the record. For instance, with regard to DEC's February 2021 avoided cost offer, Duke seeks to strike Cherokee's comments on DEC's use of "Stale Gas Costs". *See* Motion, seeking to strike the section on "Stale Gas Costs" at p. 10 of Cherokee's Comments. But the information provided by Cherokee to underscore the staleness

[1] It is no surprise that incorporating the benefit of dispatchability indicates a higher avoided energy value ($103.65/kW-year) than the value calculated by Witness Strunk. Witness Strunk noted that incorporating dispatchability would increase the calculated avoided costs in his pre-filed rebuttal: "The absence of explicit modeling of Cherokee's actual dispatch flexibility makes my analysis conservative. Incorporating flexibility could only increase the calculated value of Cherokee to the DEC system, all else equal." (See Strunk Rebuttal, pp. 14.)

of DEC's information is in fact in the record. DEC used gas prices from August 2020, to support its artificially low avoided costs as the base of DEC's February 2021 offer. *See* Tr. Vol. 3, p. 636 ("[T]hat offer was based on gas prices as of August 20[20], so now we're looking at gas prices that are about a year stale.") Mr. Freund in both his direct testimony and during hearing noted that he used August 2020 gas assumptions for the DEC February 2021 offer. Tr. Vol. 2, p. 338.5 (figure 1); Tr. Vol. 3, p. 353

The Motion argues that Cherokee's suggestions in its Comments on Duke's Late Filed Exhibit that it was improper for DEC to rely on Transco Zone 5 instead of Zone 4 gas prices constituted new evidence. (Motion, p. 9). However, Witness Strunk raised the issue of the inappropriateness of Zone 5 pricing at the hearing: *See* Hearing Transcript Vol. 3, p 627: "DEC suddenly in its 2021 offer has switched the gas hub off of which the Cherokee gas prices in the modeling is referenced, and it's now using Transco Zone 5, which is a higher price than Transco Zone 4, which is the gas price referenced in the contract." *See also* Tr. Vol. 3, pp. 636-637. As a result, these assertions are nothing new.

III. Conclusion

The Duke Companies added new evidence to the record via their Late-Filed Exhibit One. Cherokee's Comments responded appropriately to this new evidence. Therefore, Cherokee requests that the Commission deny the Motion and grant such other relief as is just and proper.

Respectfully submitted,

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